IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-1836

JESSE FULK and DONALD CEARLOCK,

Plaintiffs-Appellants,

v.

UNITED TRANSPORTATION UNION,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 93-3278—**Richard Mills**, *Judge.*

ARGUED OCTOBER 27, 1998—DECIDED NOVEMBER 12, 1998

Before CUMMINGS, CUDAHY and FLAUM, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* This case presents the question of whether the United Transportation Union (the "Union") violated its own constitution when it required, in addition to overall majority approval, that a majority of each district approve a proposed buyout plan in order for members in that district to participate. Plaintiffs Jesse Fulk and Donald Cearlock were employees of the Norfolk & Southern Railroad (the "Railroad") and members of the Union. Since their district failed to approve the buyout plan, the plaintiffs did not receive the payments that members from districts which approved the plan received.

After unsuccessfully seeking internal union remedies,[1] plaintiffs sued the Union, alleging the voting procedure used was inherently discriminatory in violation of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §411(a), and contrary to the Union's constitution in violation of §301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185, which provides a cause of action in such cases.

This is the third time this case has appeared before this Court. The first time, we reversed the district court's denial of summary judgment on the LMRDA claim, holding the voting procedure not to be inherently discriminatory. *Fulk v. United Transportation Union*, 81 F.3d 733 (7th Cir. 1996). The second appeal concerned the district court's grant of summary judgment on the §301 claim. We held the district court took an overly restrictive view of its discretion in whether to require exhaustion of union procedures before hearing the merits and remanded to the district court for further consideration. *Fulk v. United Transportation Union*, 108 F.3d 113 (7th Cir. 1997). The district court then considered the merits of the plaintiffs' §301 claim and granted summary judgment to the Union, holding that the voting procedure did not violate the Union's constitution. *Fulk v. United Transportation Union*, 995 F.Supp. 937 (C.D. Ill. 1998). Plaintiffs appeal. We affirm.

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[1] Plaintiffs wrote a letter to International President DuBose challenging General Chairperson Thompson's decision on the voting procedures. President DuBose upheld the decision by letter. The plaintiffs then appealed to the General Committee of Adjustment, which took no action. Plaintiffs took their appeal to the Union's Board of Appeals, which determined that plaintiffs should have appealed President DuBose's letter to the Board of Directors and that plaintiffs were time-barred from pursuing such an appeal at that time.

Background

As we explained in the previous two appeals, *Fulk*, 81 F.3d at 734-735, *Fulk*, 108 F.3d at 114-115, the Union represents certain workers employed by the Railroad. These workers are grouped by the Railroad into several geographic districts, known as "seniority districts." Plaintiffs were members of the Springfield [Illinois] District. The Union membership was also divided into several, considerably larger, geographical units, known as "General Committees of Adjustment" (GCAs), which in turn embraced several seniority districts.

This dispute arose when the Union brought up a proposed modification of its agreements with the Railroad for membership vote. The "crew consist agreement," covering conductors, brakemen and yardmen, governs the size of the crew used to operate each train. The original agreement, adopted in 1984, allowed the Railroad to reduce the crew size from two brakemen and a conductor to one brakeman and one conductor as workers retired or otherwise left the Railroad's employ. The Railroad agreed at that time to share the resulting cost savings with the workers. Whenever a train ran with only two crew members, the Railroad paid $53.25 into a "productivity fund," which was credited to the workers. A separate productivity fund was maintained for each seniority district. The amount paid into each fund depended on the number of trains in that particular district which had been operated with two-member crews.

The modifications disputed here were negotiated in 1991. The two modifications were: First, the "crew consist agreement" was to be changed to allow the Railroad to operate with one-person crews when the size of the work force within a particular seniority district permitted. Second, the productivity funds were to be eliminated. In their place, the Railroad would make a one-time payment in December 1991 of $20,000 to each employee and an additional payment of $40,000 to each employee upon death, retirement or termination of employment.

The union leadership decided to implement different voting procedures for each of the two proposals. The reduction in crew size was put to an aggregate vote of all members of a particular GCA. Votes were tallied within each craft (conductor, brakeman and yardman). Acceptance of the proposal by a majority of each craft's workers was required to pass the new crew consist agreement.

The union leadership took a different approach to the productivity fund buyout. The buyout was put to an independent vote in each seniority district, with the result in each district determining the fate of that district's productivity fund. The Union justified the district-by-district voting procedure by the fact that the value of the funds varied from district to district, as did the relative proportion of older workers to younger workers. Within each district, a majority of each craft was again required to approve the proposal.

In plaintiffs' GCA, the modification to the crew consist agreement was approved by nearly two-thirds of those voting in each craft. In the Springfield district, however, the productivity fund buyout proposal failed to carry a majority among brakemen. Hence plaintiffs were unable to participate in the productivity fund buyout. They complain that the district-by-district voting procedure for the productivity fund buyout violated the Union's constitution.

Analysis

We review a district court's grant of summary judgment de novo, applying the same standards as the district court and viewing the record and all reasonable inferences to be drawn from it in the light most favorable to the nonmoving party. *Independent Construction Equipment Builders Union v. Hyster-Yale Materials Handling*, 83 F.3d 930, 932 (7th Cir. 1996).

This case concerns a dispute about the meaning of a union constitution. We defer to a union's interpretation of its own constitution so long as the interpretation is not

unreasonable. *Maher v. International Brotherhood of Electrical Workers*, 15 F.3d 711, 714 (7th Cir. 1994). "[A] union's interpretation of its own constitution, by-laws, and other promulgations is entitled to judicial deference; we must be able to call the interpretation unreasonable, perhaps even 'patently unreasonable,' before we can set it aside." *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213, 218 (7th Cir. 1990). This deference to a union's reasonable interpretation of its own constitution is predicated on a federal policy of noninterference in internal union affairs. *Local 657, United Brotherhood of Carpenters v. Sidell*, 552 F.2d 1250 (7th Cir. 1977). Our question then in interpreting the Union's constitution is whether the Union's construction of its own constitution is a reasonable one.

At issue in this case is the interpretation of Article 85 of the Union's constitution. It reads:

> The General Chairperson must poll the entire membership holding seniority and working in the craft involved on the property by mail referendum ballot prior to signing any system agreements and be governed by the majority of the votes cast.

Plaintiffs contend that Article 85 required the Union to put the productivity fund buyout proposal to a simple majority vote before the entire union membership within each GCA. The Union argues that Article 85 imposed no such requirement.

The dispute between the Union and plaintiffs revolves around the meanings of "system agreement" and of "majority" in Article 85. The Union contends that the productivity fund buyout proposal was not a system agreement and hence not governed by Article 85's strictures. Alternatively, the Union argues that even if the proposal was a system agreement, Article 85 does not prohibit the Union from seeking majority approval within each district as well as within each GCA. Our question, as noted above, is whether the Union's interpretation is reasonable.

The phrase "system agreement" is not defined in the Union constitution. The only definition we have comes from the deposition testimony of General Chairperson Thompson, who testified that a "system agreement" is one which applies to the entire area of a GCA. Plaintiffs do not contest this definition, but contrast a "system agreement" with a "local agreement," and argue that since the productivity fund buyout proposal was not a local agreement, it must be a system agreement. Plaintiffs buttress this argument by pointing to the method of ratification the Union chose in approving the proposal (submission to all members of the GCA) and the fact that the productivity fund buyout proposal replaced the productivity funds, which applied throughout the GCA.

The Union, by contrast, argues that the agreement was neither a "system agreement," nor a "local agreement," but a "hybrid agreement," incorporating elements of both. The "crew consist agreement" was more like a "system agreement," it argues, and the productivity fund buyout proposal resembled a "local agreement." Together these two proposals assuredly formed a "hybrid agreement." The Union therefore contends that if Article 85 does require a straight majority vote for system agreements (a proposition they dispute), it would either not apply to hybrid agreements or apply only to the "system agreement" component of a hybrid agreement, here, the "crew consist agreement," and not to the "local agreement" component which plaintiffs challenge.

The principal difficulty with plaintiffs' argument is that it rests on the premise that the Union can conclude only one of two types of agreements. Were we to agree with plaintiffs that the Union's constitution limits the kinds of agreements to these two types, it might be necessary to decide whether in fact the productivity fund buyout proposal was a "system agreement" (or allow a trier of fact to do so). However, plaintiffs point to no provision of the Union constitution which limits the Union to only two kinds of agreements, system and local, and bars so-called

"hybrid agreements." Hence we cannot say that the Union's interpretation, allowing for "hybrid agreements," is unreasonable.

Even assuming that the productivity fund buyout proposal is in fact a system agreement, it is still not clear that plaintiffs would prevail. When seeking approval of system agreements, Article 85 imposes two duties on the General Chairperson: (1) to "poll the entire membership holding seniority and working in the craft" and (2) to "be governed by the majority of the votes cast." Assuming the productivity fund buyout proposal was a system agreement, it is not clear that General Chairperson Thompson failed to comply with its strictures.

The Union argues that Thompson both polled the entire membership and was governed by a majority of the votes cast and thus complied with Article 85. While it is true that Thompson was not governed by the majority of the entire membership, the Union contends, but by majorities within each seniority district, nothing in Article 85 limits the General Chairperson to a single majority poll of the entire membership. Plaintiffs respond that "majority of the votes cast" can only reasonably be thought to modify "entire membership," and hence the voting procedures used in adopting a system agreement violated Article 85.

It is unnecessary to resolve which of the two readings of "majority" is the better one. Rather, we ask only whether the Union's interpretation is unreasonable. *Maher*, 15 F.3d at 714. Article 85 is ambiguous as to which majority must govern when the General Chairperson polls the entire membership. The value of the productivity fund buyout proposal to each district was a function of the value of the existing productivity funds, the age of the workers, and the number of reduced crews in each district. This value varied widely from district to district. In light of this variation, the Union allowed each district's participation in the plan to be governed by a majority vote within that district, rather than by a single majority vote across the entire membership. Article 85 does not plainly bar the

Union's interpretation, and, in light of the district-by-district variation in value, it cannot be said that such an interpretation was unreasonable.

The district-by-district voting procedure for the fund buyout proposal did not violate Article 85 of the Union's constitution. The judgment of the district court is

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[Filed March 5, 1998]

IN THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

JESSE FULK and DONALD CEARLOCK,	)	
Plaintiffs,	)	
v.	)	No. 93-3278
UNITED TRANSPORTATION UNION,	)	
Defendant.	)	

OPINION

RICHARD MILLS, District Judge:

The bottom line.

Summary judgment for the Union.

United Transportation Union (Union) represents operating craft employees of Norfolk Southern Railroad (Railroad). Jesse Fulk and Donald Cearlock are former employees of the Railroad and former members of the Union.

After much litigation—including two appeals to the U.S. Court of Appeals for the Seventh Circuit—only one issue remains in this case: Did the voting procedures used to decide whether to approve the Railroad's buyout of certain "productivity funds" violate the Union's Constitution?

I. BACKGROUND

Here's what happened. The productivity funds at issue in this case were the product of a 1984 "crew consist" agreement between the union and the Railroad. That agreement permitted the Railroad to reduce the operating crew size of each train from two brakemen and a conductor to one brakeman and a conductor as workers gradually left their jobs with the Railroad. In return, the Railroad agreed to share the resulting operating cost savings with the employees. Each time a rain operated with a reduced crew, the Railroad paid $53.25 into a so-called "productivity fund" which was maintained for the benefit of the workers.

The Railroad maintained a separate productivity fund for each of several different geographical regions known as "seniority districts". The existence of these seniority districts predated the productivity fund arrangement. Only employees with seniority in a given district could work and receive payments from the productivity fund in that district. At the end of the year, the amount reflected in each productivity fund was totaled and divided among the workers in the fund's seniority district. The benefits of the funds varied greatly because the amount of work and the frequency of reduced crew usage varied across districts.

When the Railroad proposed to buy out the productivity funds in July 1991, the proposal came in conjunction with another proposed modification of the 1984 collective bargaining agreement. The Railroad wanted to further reduce operating crew sizes to only one worker. Assuming this proposal was approved by union membership, the Railroad was prepared to buy out its

obligation to maintain the productivity funds. Under the terms of the buyout agreement, the Railroad would pay each worker $20,000 up front and an additional $40,000 upon the worker's death, retirement or termination of employment. The crew reduction proposal and the productivity fund buyout were presented to the union membership separately. The union membership would only have the option of approving the buyout if it approved the crew reduction.

The union leadership decided to employ a different voting procedure for each of the two proposals. The crew reduction proposal would stand or fall upon an aggregate vote of the entire union membership within certain subunits of the Union known as General Committees of Adjustment (GCAs). The GCAs covered geographic territories which were considerably larger than the seniority districts. Plaintiffs were members of GCA GO-719 which covered a territory known as the former Wabash Railroad territory and encompassed twelve different seniority districts. General Chairperson Kim Thompson headed GCA GO-719.

The voting procedure adopted for the productivity fund buyout proposal was markedly different. During negotiations, General Chairperson Thompson proposed, and the Railroad agreed, to allow each district the opportunity to approve or reject the proposed buyout of its productivity fund. This approach was justified by the fact that the value of each district's fund varied, as did the relative proportion of older employees to younger employees. Accordingly, the productivity fund buyout proposal would be voted on at the seniority level, allowing union members in each of the twelve districts to decide whether or not to approve the buyout of its par-

ticular fund. The union membership in Plaintiff's GCA were informed of the district by district voting procedure in advance of the voting date.

General Chairperson Thompson submitted the two proposals for a vote in late 1991. The crew reduction proposal was approved by the aggregate vote of GCA GO-719's membership. Predictably, the results of the district by district vote on the productivity fund buyout varied, each district reaching different conclusions about whether to retain or relinquish its productivity fund. Plaintiffs' district voted to retain its fund. Plaintiffs, who were near retirement, did not expect to enjoy much future benefit from their district's fund and therefore would have preferred to receive the $60,000 in buyout money.

II. SUMMARY JUDGMENT

Under Fed. R. Civ. P. 56(c), summary judgment "should be granted if the pleadings and supporting documents show that 'there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law'" *Ruiz-Rivera v. Moyer*, 70 F.3d 498, 500-01 (7th Cir. 1995). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A genuine issue of material fact exists when "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Courts must consider evidence in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970).

III. ANALYSIS

Plaintiffs argue that the district by district vote on whether to approve the productivity fund buyout proposal violated Article 85 of the Union's constitution. That provision reads in part:

> The General Chairperson must poll the entire membership holding seniority and working in the craft involved on the property by mail referendum ballot prior to signing any system agreements and be governed by the majority of the votes cast.

Plaintiffs argue that this language required the productivity fund buyout proposal to be decided by a single vote of all union membership within the GCA, with one result governing all twelve districts. In other words, Plaintiffs contend that the productivity fund buyout agreement should have been voted on in the same manner as the crew reduction agreement. Defendant disagrees.

The question turns purely on one's interpretation of Article 85. This court must defer to the Union's interpretation of its own constitution so long as it is not unreasonable. *Maher v. Int'l Brotherhood of Electrical Workers*, 15 F.3d 711, 714 (7th Cir. 1994). *See also Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213, 218 (7th Cir. 1990) (a union's interpretation of its own constitution must be "unreasonable, perhaps even 'patently unreasonable,' before we can set it aside"). The reason for this deference is to avoid "heavy-handed judicial interference" with the internal affairs of unions. *Air Wisconsin*, 909 F.2d at 218.

The Court cannot say that the Union's interpretation of Article 85 is unreasonable. On its face, the provision

applies only to "system agreements". Plaintiffs point to no provision of any union instrument defining what system agreements are[1] but argue that the productivity fund buyout proposal is clearly one of them. They argue that the productivity fund buyout proposal must be a system agreement, because the original productivity fund arrangement "applied uniformly throughout the entire system". This argument is not very compelling. While the Railroad may have used the same formula to calculate its liability in different funds, the formula yielded widely divergent results because the factors determining those results (i.e., the frequency of reduced crew usage, etc.) varied widely across districts.

But Plaintiffs' position suffers from an even more fundamental flaw. According to Plaintiffs, Article 85 requires certain agreements, including this buyout agreement, to be put to a single system-wide vote leading to a single system-wide outcome for all districts. Plaintiffs fail to recognize, however, that the very terms of the buyout agreement permitted each district to decide the fate of its own fund. General Chairperson Thompson and the Railroad explicitly agreed to such a condition. In this sense, Plaintiffs should direct their complaints at the terms of the agreement itself, rather than the procedures adopted to vote on that agreement. In any case, it is difficult to see how the productivity fund agreement could possibly be a "system agreement"

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[1] According to deposition testimony from General Chairperson Thompson, the term "system" applies to the area governed by a given GCA. The term "system agreement", therefore, probably refers to an agreement which contemplates some application throughout such a geographic area. Beyond this level of generality, however, the Court is without guidance.

within the meaning of Article 85; if Article 85 requires a voting procedure which leads to a single outcome, it would be absurd to apply that provision to an agreement which itself presupposes the possibility of several different outcomes.

But even if the productivity fund buyout agreement is a "system agreement" within the meaning of Article 85, the language of that provision can reasonably be read to permit district by district voting in circumstances such as these. The language requires that General Chairperson to "poll the entire membership . . . by mail referendum ballot prior to signing any system agreements and be governed by the majority of the votes cast." Here, there is no question that the General Chairperson polled the "entire membership". Nor is there any question that in each district his decision was "governed by a majority of votes cast." The only aspect of Article 85 supporting Plaintiffs' interpretation is the provision's use of the singular noun, "majority." While this drafting idiosyncrasy could be woodenly construed to require a voting procedure which entails only one majority and only one result, other reasonable interpretations exist. One could reasonably interpret Article 85 as requiring the General Chairperson to do no more than submit system agreements to some sort of majority vote in which every union member is allowed to participate.

Moreover, it is doubtful that the drafters of Article 85 intended it to apply as rigidly as Plaintiffs would apply it. Plaintiffs' interpretation would require the fate of all productivity funds to be decided in one fell swoop, even though the buyout price was not linked to individual fund values—values which varied drastically across dis-

tricts. The Railroad did not insist that the buyout take place on an all or nothing basis and this Court can think of no reason why the drafters of the Union's constitution would have mandated such an inflexible result. The Union's constitution does not even mention productivity funds, and its authors probably never anticipated the kind of district-specific agreement at issue here. The Seventh Circuit has more than once refused to interfere with a union's decisions in reacting to such unanticipated situations, even where the language union's constitution seemed to afford less flexibility than the language at issue here. *See, e.g. Maher*, 15 F.3d at 714 (refusing to interfere with union officer's conclusion that a constitution provision did not apply during a local union's trusteeship because the constitution did not address the issue of administering a trusteeship); *Air Wisconsin*, 909 F.2d at 217-218 (dismissing language in union policy statement and union constitution as "preambular" and refusing to apply it during airline merger when constitution did not even mention airline mergers). The Union's constitution is a "flexible instrument," and entrusts union officers with broad authority to protect the interests of union membership. *Allen v. United Transportation Union*, 964 F.2d 818, 820 (8th Cir. 1992) (interpreting United Transportation Union's constitution); *Famulare v. United Transportation Union*, 639 F.Supp. 965, 969 (S.D.N.Y. 1986) (same).

In conclusion, this Court must defer to the Union's interpretation of its constitution because that interpretation was not unreasonable. The union, therefore, is entitled to summary judgment.

CONCLUSION

Ergo, Defendant's motion for summary judgment[2] is ALLOWED.

ENTER: 4 March, 1998.

FOR THE COURT:
/s/ Richard Mills
United States District Judge

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[2] Because of the procedural posture of this case, the Court ordered the parties to rebrief Defendant's original summary judgment motion. At that time, the original motion was nearly three years old. Rather than resurrecting this long-dead motion, the Court will treat Defendant's rebriefing as the new motion for summary judgment.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

February 12, 1999

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge

JESSE FULK and DONALD CEARLOCK,

Plaintiffs-Appellants,

No. 98-1836 v.

UNITED TRANSPORTATION UNION,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 93-3278—**Richard Mills**, *Judge*.

ORDER

On consideration of the Petition for Reconsideration with Suggestions for Reconsideration in Banc filed by plaintiffs-appellants on January 27, 1999, all of the judges on the panel have voted to deny rehearing and no judge in active service has requested a vote on the suggestion for rehearing en banc. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.